

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



July 18, 1986

ALL-COUNTY INFORMATION NOTICE NO. 1-65-86

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: EFFECTS OF BANKRUPTCY ON PUBLIC ASSISTANCE
OVERPAYMENTS

REFERENCE:

The purpose of this letter is to provide the counties with guidelines that may assist in the processing of overpayment cases when a public assistance recipient (AFDC-FG/U, EA-UP, RCA/ECA, RDP or Food Stamps) files for bankruptcy or claims his or her overpayment debt has been discharged in bankruptcy proceedings. Specific bankruptcy questions or concerns are legal issues that should be referred to your County Counsel. However, the general information below may assist you in deciding whether to continue or cease overpayment recovery activity, or to refer to counsel for advice. As a general rule:

- o Public assistance overpayments which are not the result of misrepresentation or fraud are dischargeable under bankruptcy law.
- o A Trustee is named for every bankruptcy proceeding (case). The Trustee is the contact person for any creditor having an interest in the bankruptcy proceeding, such as a county welfare department.
- o In order for a debt to be discharged, it must be listed in the bankruptcy schedule of debts. The listing of debts gives the debtor's creditors an opportunity to complain as to the dischargeability of their debts.
- o A county welfare department should always make sure that it is listed as a creditor with the Trustee, if the recipient who is filing for bankruptcy owes the county money. This ensures the county a chance of sharing in any proceeds from the bankrupt business or estate. The county should also use the right of set-off to balance underpayments and overpayments.

- o Acceptable evidence of a discharged debt would be a copy of the "Order Granting Discharge" issued by the bankruptcy court. Interim orders by the Bankruptcy Court will also require suspension of all collection efforts, including grant adjustments and/or balancing.
- o If a recipient, or former recipient, of public assistance who owes the county money because of an overissuance/overpayment goes through bankruptcy but does not get the overissuance/overpayment discharged by the Bankruptcy Court, the debt is usually still valid and the county should continue its collection efforts.
- o If the overissuance/overpayment debt is discharged by the Bankruptcy Court, it is no longer collectable. The county should cease all collection efforts.
- o For cash assistance recipients, liens against real property per EAS 42-213 are generally considered security interests and remain enforceable despite the bankruptcy proceeding.
- o Overissuance/overpayment debts which result from recipient misrepresentation or fraud are not dischargeable under bankruptcy law. The county should inform the trustee of the case facts if such a debt is proposed to be discharged. It will then be up to the bankruptcy court to decide whether or not the debt is dischargeable.
- o Existing debts which are known only to the creditors and which are not disclosed by them until after bankruptcy proceedings are completed may not be collectable.

If you have any questions regarding the content of this letter, you may contact Jim Dunelew of the AFDC and Food Stamp Policy Implementation Bureau at (916) 324-2015 or ATSS 454-2015.



ROBERT A. HOREL
Deputy Director

cc: CWDA